

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kristen H. Malmstrom,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0073

Decision and Order Reversing the
Determination of the Douglas
County Board of Equalization

Background

1. The Subject Property is a residential property improved with a 1,170 square foot ranch style residence, with a legal description of: Benson View Acres Lot 5 Block 8 – EX E 86 Ft- Lt 5 140 X 145, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$102,200 for tax year 2018.
3. Kristen H. Malmstrom (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested assessed values of \$71,216 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$85,000 for tax year 2018.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).¹
6. A Single Commissioner hearing was held on December 5, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. David Malmstrom was present at the hearing for the Taxpayer.
8. Stan Mlotek, Real Estate Specialist with the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.²

¹ Appellant also filed an appeal for tax year 2019, Case No. 19R 0403. On October 15, 2019, the Commission issued an order finding that it had jurisdiction over the 2019 appeal. On October 18, 2019, the Commission issued an order scheduling a hearing on the merits of the 2018 and 2019 appeals for December 5, 2019. On November 4, 2019, the Commission reconsidered and reversed its decision finding jurisdiction in the 2019 appeal, and dismissed the 2019 appeal. This decision was not appealed and became final. Therefore, although the parties presented information relevant to the 2019 appeal at the December 5 hearing, the 2019 appeal had already been dismissed. Accordingly, this decision addresses only the appeal for tax year 2018.

² Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

10. The Commission's review of a determination of the County Board of Equalization is de novo.³
11. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."⁴ That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁵
12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁶
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁹

Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the assessed value of the land component of the Subject Property was not equalized with other comparable properties.
17. The Taxpayer presented the Property Record File (PRF) for the Subject Property, three properties he alleged had lower land values and four properties that had land values similar to the Subject Property.
18. The Taxpayer presented maps showing that the properties presented are all located within four blocks of each other and have similar topographical characteristics.

³ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁵ *Id.*

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

19. Land must be valued as though vacant and available to develop to its highest and best use.¹⁰
20. Professional appraisal practices hold that “A given land use has an optimum parcel size, configuration, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement. The portion of the property that represents an optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining land area is either excess or surplus land.”¹¹
21. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹²
22. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹³
23. A review of all eight parcels presented indicates that land values are separated into two separate groups. Within each group, values increase as the size of the lots increase. The basis for determining what group a parcel is placed into for determining land values appears to have nothing to do with the land as though vacant and available to develop but rather the age of the improvements.
24. For example, two of the properties presented are located directly next door to each other, are located in the same neighborhood, are located in the same subdivision, and are both 16,800 square feet in size. One of these parcels has an improvement built in 1910 and has a land value of \$10,800, the other has an improvement built in 2005 and has a land value of \$4,000.
25. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁴
26. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹⁵
27. From the information before it, the Commission finds and determines that the equalized value of the land component of the Subject Property is \$4,600 for tax year 2018..
28. The Taxpayer alleged that the assessed value of the improvements component of the Subject Property was too high and not equalized with other comparable properties.
29. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁶

¹⁰ Title 350 Neb. Admin. Code ch 50 §002.05A (7/17), see also, International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

¹¹ Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008).

¹² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹³ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

¹⁴ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁵ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

¹⁶ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

30. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”¹⁷
31. The County Board presented the PRF for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of the Subject Property. These sales were reviewed in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, for tax year 2018 to support the per square foot assessed values of the Subject Property.
32. The PRFs presented demonstrate that differences in the assessed values of the Subject Property and the properties presented as comparables are due to differences in their characteristics such as style of construction, quality, condition, age and amenities (i.e. garages, porches, basement size and finish, etc.).
33. The overall assessed value of the improvements on the Subject Property is higher than the other properties that the Taxpayer presented as improvement comparables, but this is the result of the combination of the Subject Property’s features such as an enclosed wall porch, attached garage and deck.
34. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
35. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 4,600
<u>Improvements</u>	<u>\$75,000</u>
Total	\$79,600

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2018.

¹⁷ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

7. This Decision and Order is effective on February 26, 2021.

Signed and Sealed: February 26, 2021

Steven A. Keetle, Commissioner